

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-40537
Summary Calendar

WESLEY J. RILEY, ET AL.,

Plaintiffs-Appellants,

VERSUS

AMERICAN RIVER TRANSPORTATION CO., ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
(92-CV-7)

(November 29, 1994)

Before GARWOOD, HIGGINBOTHAM and DAVIS, Circuit Judges.

PER CURIAM:¹

Riley appeals the take-nothing judgment rendered against him following an adverse jury verdict. We affirm.

I.

Wesley J. Riley brought Jones Act and unseaworthiness claims against his employer, American River Transport Company ("ARTCO"), and the M/V COOPERATIVE ENTERPRISE for injuries he allegedly sustained while working as a deckhand aboard the COOPERATIVE

¹ Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

ENTERPRISE. At trial, Riley testified that in March or April of 1990 he was injured when he and a co-worker were securing barges together in a tow. This process entailed using a ratchet to tighten a wire connecting two barges. The wire was connected to the ratchet by a curved hook, called a "pelican hook," which was attached to the ratchet. A metal ring or "keeper" was slipped over the end of the pelican hook to keep it closed. According to Riley, as he and the co-worker "jerked" the ratchet to remove slack from the wire, the wire came out of the pelican hook, causing Riley to fall backwards onto a metal cavel. Riley contended that the worn condition of the pelican hook allowed the keeper to come loose thereby causing the wire to slip off the hook. The jury found that while Riley did sustain a back injury as the result of an accident on the COOPERATIVE ENTERPRISE, the injury was not caused by the shipowner's negligence nor any unseaworthy condition of the vessel or its equipment. The district court entered a take-nothing judgment on the verdict, and this appeal followed.

II.

On appeal, Riley challenges the jury's findings that ARTCO was not negligent and that the COOPERATIVE ENTERPRISE was not unseaworthy. A review of the record reveals that Riley did not move for judgment as a matter of law pursuant to Fed. R. Civ. P. 50 before the close of all evidence. Nor did he move for judgment as a matter of law under Rule 50 or for a new trial under Rule 59 after the verdict was rendered. In the absence of such motions, we cannot review the sufficiency of the evidence supporting the jury's

verdict. **McCann v. Texas City Refining, Inc.**, 984 F.2d 667, 673 (5th Cir. 1993); **Coughlin v. Capitol Cement Co.**, 571 F.2d 290, 297 (5th Cir. 1978). Rather, our review is limited to whether there was any evidence to support the jury's verdict or whether plain error was committed which would result in a "manifest miscarriage of justice." **Id**; **see also Shipman v. Central Gulf Lines, Inc.**, 709 F.2d 383, 385 (5th Cir. 1983).

It is clear to us that at least some evidence supports the jury's findings. Both Riley and his co-worker, Mr. Russell, testified that a wire can slip out of a non-defective pelican hook for a number of reasons during the operation of tightening the wire to secure barges together. If the crewmembers securing the barges bump the keeper while attempting to take the slack out of the wire, it may slip out of a perfectly sound pelican hook. Riley did not report the accident immediately, and the pelican hook was not preserved. Riley was the only witness who testified that the involved pelican hook was worn and therefore defective. The defendant cast doubt on this testimony on cross examination of Riley, who stated that he had inspected the pelican hook before using the ratchet and that it had appeared to be in good condition.

The jury was entitled to conclude from this record that the accident did not result from a worn hook as Riley described and thus that Riley had not carried his burden of proof in establishing that the accident resulted from the COOPERATIVE ENTERPRISE's unseaworthiness or ARTCO's negligence. Because there is some

evidence in the record to support the verdict, the district court's judgment is affirmed.

AFFIRMED.